

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1312/03-04  
(These minutes have been seen  
by the Administration)

Ref: CB1/BC/11/02

**Bills Committee on  
Broadcasting (Amendment) Bill 2003**

**Minutes of meeting  
held on Monday, 1 March 2004, at 4:30 pm  
in Conference Room A of the Legislative Council Building**

**Members present** : Hon SIN Chung-kai (Chairman)  
Hon NG Leung-sing, JP  
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP  
Hon CHAN Kwok-keung, JP  
Dr Hon Philip WONG Yu-hong, GBS  
Hon Howard YOUNG, SBS, JP  
Hon Albert CHAN Wai-yip  
Hon Audrey EU Yuet-mee, SC, JP  
Hon MA Fung-kwok, JP

**Members absent** : Dr Hon David CHU Yu-lin, JP  
Hon Abraham SHEK Lai-him, JP

**Public officers  
attending** : Mrs Marion LAI, JP  
Deputy Secretary for Commerce, Industry and  
Technology (Communications and Technology)

Mr Eddie CHEUNG  
Principal Assistant Secretary for Commerce, Industry  
and Technology (Communications and Technology)

Mr Danny LAU  
Assistant Director of Telecommunications  
(Operations)  
Office of the Telecommunications Authority

Mr Allen LAI  
Senior Government Counsel

**Clerk in attendance** : Miss Polly YEUNG  
Chief Council Secretary (1)3

**Staff in attendance** : Ms Connie FUNG  
Assistant Legal Adviser 3

Ms Debbie YAU  
Senior Council Secretary (1)1

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Action

**I Confirmation of minutes and matters arising**

LC Paper No. CB(1)1004/03-04 - Minutes of seventh meeting on  
2 February 2004

The minutes of seventh meeting on 2 February 2004 were confirmed.

**II Meeting with the Administration**

LC Paper No. CB(1)1137/03-04(01) - Committee Stage Amendments  
proposed by Hon MA Fung-kwok  
to the Bill

LC Paper No. CB(1)1164/03-04(01) - Marked-up copy of the Committee  
*(tabled and subsequently issued to members on 2 March 2004)* Stage Amendments proposed by  
Hon MA Fung-kwok to the Bill

LC Paper No. CB(1)1137/03-04(02) - Letter dated 24 February 2004  
from Hon MA Fung-kwok on the  
use of unauthorized devices to  
receive signals of Direct-to-Home  
broadcast satellite

LC Paper No. CB(1)1150/03-04(01) - Administration's response to Hon  
MA Fung-kwok's letter dated 24  
February 2004

- LC Paper No. CB(1)1150/03-04(02) - Administration's response to the issues raised at the meeting on 2 February 2004
- LC Paper No. CB(1)895/03-04(02) - Committee Stage Amendments proposed by the Administration
- LC Paper No. CB(1)908/03-04(01) - Marked-up copy of the Committee Stage Amendments proposed by the Administration (as at 28 January 2004) to the Bill prepared by the Legal Service Division
- LC Paper No. CB(3)602/02-03                      The Bill

2. The Bills Committee deliberated (Index of proceedings attached at Appendix).

3. Regarding the use of the term "business" in the Bill to refer to commercial activities for the purpose of making a profit, members agreed that it was not necessary to provide in the Bill a specific definition of the term to this effect.

4. On whether there should be a time limit for bringing a civil action under proposed sections 7B(1) and (3), members also agreed that it was not necessary to specify such a time limit.

5. In response to members' queries about the defence provisions, the Administration explained that the relevant proposed provision of the Bill would impose criminal liability on any person who used or possessed an unauthorized decoder for commercial pirated viewing. There was no question of employee and employer bearing different degree of criminal liabilities. The defence provisions were meant to provide reasonable defence for both the employee and the employer in proceedings for the proposed offence. Whether the employer, employee, or both of them, would be involved in the proceedings would depend on the actual circumstances.

Issues which required follow-up actions/consideration by the Administration

6. The Administration was requested:

- (a) to consider the Chairman's suggestion of drawing the attention of employees to and consulting them, through such forums as the Labour Advisory Board or other channels, on the proposed criminal liability imposed on and the defence available to employees in respect of the decoder-related offences under proposed sections 6(6) to (9) and 7(3D)

to (3G) of the Bill; and

- (b) to provide written comments on Mr MA Fung-kwok's proposed Committee Stage Amendments (CSAs) to the Bill, which should include, inter alia, comments on whether the proposed provisions, if enacted, could be enforced without difficulties.

Date of next meeting

7. The Bills Committee agreed to consider Mr MA Fung-kwok's proposed CSAs to the Bill at next meeting scheduled to be held on Friday, 2 April 2003, at 8:30 am. The Chairman invited members to consider Mr MA's proposed CSAs and to state their view/position, if any, at next meeting.

**III Any other business**

8. There being no other business, the meeting ended at 6:20 pm.

**Proceedings of the meeting of the  
Bills Committee on Broadcasting (Amendment) Bill 2003  
on Monday, 1 March 2004, at 4:30 pm  
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000001-000539	Chairman	Introductory remark and confirmation of minutes of meeting on 2 February 2004.	
000540-001259	Chairman Administration	<u>The Administration's response to the issues raised at the meeting on 2 February 2004 (CB(1)1150/03-04(02))</u> : Introduction by the Administration	
001300-001428	Chairman Assistant Legal Adviser 3 (ALA3) Administration	Members agreed that it was not necessary to provide a specific definition of the term "business" in the Bill.	
001429-011749	Chairman Administration ALA3 Mr MA Fung-kwok Mrs Selina CHOW Clerk Mr CHAN Kwok-keung	<p>On the construction of the defence provisions for employees under proposed sections 6(8) to (9) and 7(3F) to (3G) of the Bill,</p> <p>(a) members noted that the Administration had proposed to delete by way of Committee Stage Amendments (CSAs) the proposed provisions relating to end-user criminal liability under the Copyright (Amendment) Bill 2003 (CAB), which included proposed provisions on criminal liability and defence for employees, and would consult stakeholders further on the scope of end-user criminal liability;</p> <p>(b) the Administration to consider the Chairman's suggestion of informing and consulting employees on the proposed criminal liability and defence provided under the Bill;</p> <p>(c) arguments for and against the proposed liability and defence for employees under the Bill;</p> <p>(d) the burden of establishing the defence by an employee charged with an offence under the Bill seemed more onerous than that under CAB because under the Bill, he was also required to prove that he had no reasonable grounds to believe that the decoder in question was an unauthorized decoder;</p>	The Administration to consider and follow-up as per paragraph 5(a) of the minutes.

Time Marker	Speaker	Subject(s)	Action Required
		<p>(e) whether the proposed defence for the employees was adequate and where necessary, could be invoked by the defendant without great difficulty; and</p> <p>(f) Mr MA Fung-kwok considered the Administration's proposal by and large acceptable.</p>	
011750-011854	Chairman ALA3	Members agreed that it was not necessary to specify a time limit for bringing civil action under proposed sections 7B(1) and (3).	
011855-014224	Chairman Administration Mr MA Fung-kwok Mrs Selina CHOW	<p><u>The Administration's response (CB(1)1150/03-04(01)) to Mr MA Fung-kwok's letter dated 24 February 2004 (CB(1)1137/03-04(02):</u></p> <p>(a) The Telecommunications Ordinance (Cap 106) had already empowered the Telecommunications Authority to take action against any apparatus, including unauthorized decoders, which might cause harmful interference;</p> <p>(b) Mr MA Fung-kwok opined that there was difference in the Administration's policy stance over the use of apparatus causing harmful interference to telecommunications services and the use of unauthorized decoders which might also cause such interference. Mrs Selina CHOW remarked that the issues of harmful interference to telecommunications services and pirated viewing were two separate issues.</p>	
014225-014826	Chairman Mr Howard YOUNG Mr MA Fung-kwok	<p>(a) Mr MA Fung-kwok briefed members on his proposed CSAs to the Bill (CB(1)1137/03-04(01) and 1164/03-04(01)).</p> <p>(b) The Administration to provide a written response to Mr MA's proposed CSAs to the Bill, including, inter alia, the enforceability and charging effect, if any, of the proposed provisions.</p> <p>(c) Members to state their view/position, if any, on Mr MA's proposed CSAs at next meeting to be held on 2 April 2004, at 8:30 am.</p>	The Administration to provide the written comments as per paragraph 5(b) of the minutes.